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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/537,439	03/27/2000	Jay Hosler	M-7619	4236
33031	7590	11/30/2004	EXAMINER	
CAMPBELL STEPHENSON ASCOLESE, LLP 4807 SPICEWOOD SPRINGS RD. BLDG. 4, SUITE 201 AUSTIN, TX 78759			ABELSON, RONALD B	
			ART UNIT	PAPER NUMBER
			2666	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

# Office Action Summary

Application No.

09/537,439

Applicant(s)

HOSLER ET AL.

Examiner

Ronald Abelson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-42 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**Double Patenting**

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-4 and 8-39 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 50, 48, 49, 56, 43-45, 51, 57-61, 61-77, 77, 68, 69, 68, and 75 respectively of copending Application No. 09/752,001. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

**Claim Rejections - 35 USC § 112**

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6, 7, 19-24, and 40-42 are rejected under 35

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 7 recite the limitation "the router transition" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claims 19, 22, and 40 recite the limitation "signal bearing media bearing means" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1-2 are rejected under 35 U.S.C. 102<sup>a</sup> (a) as being anticipated by Okabe (US 6,031,838).

Regarding claim 1, Okabe teaches an apparatus for a communications network (fig. 1) the apparatus comprising at least one interface circuit that reads frame data received from the communications network and writes frame data to be transmitted over the communications network (fig. 1 Line Interface), the frame data including a plurality of transport overhead fields (fig. 1 box 25, cell header, col. 6 lines 6 - 8).

Okabe teaches signature logic (fig. 1 box 25) coupled to the at least one interface circuit, the signature logic identifies signature data and writes the signature data into at least one of a plurality of transport overhead fields in an outgoing frame (fig. 1 box 25, cell header, col. 6 lines 6 - 8, adds active/standby identification data, col. 6 line 43 - 48).

Regarding claim 2, reflector logic coupled to the at least one interface circuit, wherein the reflector logic copies data from at least one of the received transport overhead fields, the copied data being placed into a transport overhead field in the

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outgoing frame (fig. 1 box 32, fig. 21 box 32c, col. 16 lines 54-57).

### ***Allowable Subject Matter***

7. Regarding claims 25 and 36, applicant's admitted prior art 'AAPA' teaches a method for a communications network including at least one local router (fig. 2 box 202) and at least one remote router (fig. 2 box 209).

AAPA teaches transmitting data from the local router to the remote router and reflecting data back to the local router (fig. 2: see bi-directional arrows between box 202 and 209).

Okabe teaches a device transmitting data in a transport overhead field, the data identifying an active interface in the device (fig. 1 box 25, cell header, col. 6 lines 6 - 8, adds active/standby identification data, col. 6 line 43 - 48).

However, Okabe does not teach nor suggest receiving the data at the local device reflected from the remote device; and configuring a communications relationship using the data.

### ***Conclusion***


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald

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Abelson whose telephone number is (571) 272-3165. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ronald Abelson  
Examiner  
Art Unit 2666

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SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600 11/22/07